

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN L BALLARD,

 PLAINTIFF

 V,

 TAGGERT BOYD
 SHANE THURMAN
 DR DANIAL DANAHER

 DEFENDANTS

CASE NO 8:23cv178
 CIVIL COMPLAINT

FILED
 U.S. DISTRICT COURT
 DISTRICT OF NEBRASKA
 2023 MAY -9 AM 11:00
 OFFICE OF THE CLERK

COMES NOW the Plaintiff, and for this cause of action against the named Defendants hereby alleges and averes the following:

GENERAL ALLEGATIONS

1. The Plaintiff, Kevin l Ballard, hereinafter "Ballard," is an inmate housed within a facility under the custody and care of Nebraska Department of Correctional Services, hereinafter "NDCS," His current mailing address is P.O. BOX 22800 Lincoln Nebraska 68542.

2. Defendant Taggert Boyd, hereinafter "Boyd," was at all times revelent here to the Warden of the Diagnostic and Evaluation Center, hereinafter "DEC," and the Lincoln Correctional Center, hereinafter "LCC," His current mailing address is P.O. BOX 22800 lincoln Nebraska 68542. Being sued in individual capacity.

3. Defendant Shane Thurman, hereinafter "Thurman," is a counselor at DEC. His current mailing address is P.O. BOX 22800 lincoln Nebraska 68542. Being sued in individual capacity.

4. Defendant Dr Danial Danaher, hereinafter "Danaher," is a medicle practitioner, employed by NDCS and precticing at LCC. His current mailing address is P.O. BOX 22800 Lincoln Nebraska 68542. Being sued in individual capacity.

because the individual defendants are employees of a state agency and are therefor agents of the State of Nebraska. Venue is proper with this court, because the acts alleged herein occurred in the State of Nebraska.

6. On or about the 6th day of June, 2019, at 9:05 a.m., Ballard was attacked in the recreation yard at DEC by another inmate and proceeded to defend himself. Unit staff called for back-up to break up the altercation. When security staff arrived, chemical agents were deployed, and Ballard broke off from the altercation and surrendered himself to staff. Before staff were able to place Ballard in restraints, Defendant Thurman grabbed Ballard forcefully, Thurman is approximately 6'8" and 300 pounds whereas Ballard is 5'9" and 175 pounds. Thurman LOST HIS MIND and slammed him to the ground, Ballard attempted to brace himself with his hand, and when he hit the ground, his neck was jarred and he felt a painful cracking sensation in his hand. Ballard cried out that his hand was broken. Thurman became enraged, losing control of himself. He proceeded to take hold of Ballard's head and slam it forcefully into the ground. Other staff restrained Thurman and removed him from the area. Ballard was placed in restraints and removed from the recreation yard.

7. Ballard was taken to DEC's Specialized Nursing Facility, hereinafter "SNF," Ballard spoke with the attending nurse and advised that he believed that he sustained a broken hand, and that he sustained a head injury as a result of having his head slammed into the ground by Thurman. Ballard requested to be seen by Doctor Haustead, who had been treating Ballard for unrelated medical conditions. The SNF nurse advised that there were no doctors on sight to treat him. No x-rays were taken, and no scans were done to determine the extent of Ballards injuries. Ballard was placed in a holding cell for several hours without treatment. Ultimately, DEC staff restrained Ballard and escorted him to LCC to be

8. Following his transfer to LCC, Ballard continually requested medical treatment from LCC staff. Ballard was told that he must wait, because medical staff were not available to see him. On or about the 9th day of June, 2019, Ballard was finally taken to LCC medical department to be seen by Defendant Danaher. Danaher did not order an x-ray of Ballard's hand. Danaher did not order a scan of Ballard's head. Nothing was done to determine the true extent of Ballard's injuries. Danaher provided Ballard with an ice pack and ordered him to be returned to his cell.

9. Ballard was held in segregation for approximately twenty-one days. During that time, Ballard experienced bouts of severe nausea and vertigo, resulting in vomiting and excruciating headaches. He was unable to walk, and was forced to utilize a wheel chair or walker to get around. Ballard advised LCC staff of these symptoms, but he received no medical attention.

10. On or about the 27th day of June, 2019, Doctor Houstead discovered Ballard's condition. Houstead immediately ordered that Ballard be taken to the emergency department at Bryan West Hospital. Ballard was seen by a medical practitioner at Bryan West Hospital, and a scan was taken of Ballard's head only. Ballard was diagnosed with severe vertigo resulting from head trauma caused by having his head slammed against the ground. Ballard was instructed to remain bedridden to ease the symptoms. Ballard was returned to LCC. Upon arrival at LCC, Doctor Houstead ordered that Ballard be transferred to DEC SNF for monitoring. Doctor Houstead then ordered an x-ray be taken of Ballard's hand. Upon review of the x-ray, it was determined that Ballard had sustained a fracture of his fifth metacarpal, and that the fracture had not properly healed. No action was taken to correct the problem. Despite Doctor Houstead's additional attention, Ballard's condition did not improve. Ballard continued to experience severe

bouts of dizziness and nausea. He remained confined to a wheelchair or forced to utilize a walker to get around. Ballard also began to experience extreme pain in his hand resulting from the improperly healed fracture. As simple as a broken hand might seem if it was your dominant hand things could get quite tricky. Ballard has had to train himself how to use his right hand and simple things like tying a shoe very difficult, wiping ones behind was probably the hardest task. But having to write has been the most discouraging. Plaintiffs left hand needs fixed it looks horrible.

11. To date NDCS staff have done nothing to cure or treat the vertigo that Ballard experiences on a daily basis. He continues to experience dizziness and nausea. To date NDCS staff have done nothing or taken any action to repair the damage to Ballard's hand. He continues to experience constant pain, and his range of motion is severely hindered.

12. Additionally, NDCS staff have confiscated Ballard's wheelchair and forced him to use a walker, which serves only to exasperate his condition. Ballard has experienced numerous falls, resulting in further injuries. To date, NDCS has done nothing to cure or treat the vertigo that Ballard experiences on a daily basis.

13. NDCS records indicate that Danahar has been the subject of numerous complaints for failing to properly respond to or treat inmate injuries. He has been demonstrating deliberate indifference to Ballard's and other inmates' medical needs by routinely refusing to order tests that the American Medical Association deems necessary for the treatment of patients. Specifically, Danahar was deliberately indifferent to Ballard's needs, (OFFICIALY) when he refused to see Ballard in a timely manner, despite the serious nature of his injuries and the resulting symptoms. He was further deliberately indifferent to Ballard's needs when he failed to order appropriate testing upon seeing Ballard.

DELIBERATE INDIFFERENCE

14. NDCS records indicate that at the time of Ballard's injuries and treatment DEC held a inmate population in excess of design capacity by no more than one-hundred and twenty percent (120)%, LCC held a inmate population in excess design by no less than ninety percent (90)%. DEC and LCC medicine department was understaffed by no less than forty percent (40)%. And DEC and LCC's medicine Department was understaffed by no less than sixty percent (60)%. Taggart Boyd was at all times the warden of both these prisons so he knew first hand what his staff and medicine department was facing but failed to read the warning signs. Even though he was under a lot of pressure by the ACLU and various other entities he just would not remedy the problem he was Deliberate Indifferent to not only the whole prison population including Ballard but he was also indifferent to his own staff. The eighth amendment also protects the incarcerated from this kind of treatment.

15. Boyd's actions in failing to protect Ballard from Thurman likewise violate the Eighth Amendment, because Boyd knew that both his prisons were bursting out of the seams. And just the fact that Boyd was so short staffed that a lieutenant and a case manager had to be called to a physical altercation just shows how understaffed and overcrowded both his prisons were. Although Boyd was under a lot of pressure he could have remedied the problem by just keeping the prison population down and making sure both his prisons had their own security teams. Boyd knew of all these problems but chose to look the other way.

SECOND CAUSE OF ACTIONEXCESSIVE FORCE

16. The Eighth Amendment prohibits the unnecessary and wanton infliction of pain.

17. Thurman's actions were not necessary to his duties in breaking up the fight between Ballard and the other inmate, because other staff had already gained control of the altercation through the use of chemical agents. Ballard had already ceased his defensive stance toward the other inmate and was in the process of surrendering himself to staff. And out of nowhere Thurman came and tackled Ballard from behind and took him to the ground. After that Thurman while Ballard was defenseless and on all

fours Thurman took Ballards head and smashed it into the concrete. It served no purpose but to inflict pain and cause harm.

THIRD CAUSE OF ACTION

INADEQUATE MEDICAL CARE

18. The Eighth Amendment protects Ballard from Deliberate indifference to objectively serious medical needs.

19. Ballard experienced an objectively serious medical need as a result of Thurman's actions, with Defendant Danahar was deliberately indifferent to. Ballard was slammed to the ground by a gigantic staff member. His head was then slammed into the ground forcefully. Ballard complained to Danahar that his hand was broken, and it was reported to Danahar that Ballard had been vomiting when attempting to stand. These symptoms and the set of facts surrounding cause are so obvious that even a layperson could easily recognize the need to attend to the injuries by conducting the de minimis of testing to discover the extent of the injuries. Danahar did not order any scans or x-rays to determine if Ballard experienced any fractures to either his hand or his head. He did not order scans of Ballard's head to determine if Ballard experienced an unseen brain injury. Danahar disregarded all the warning signs, to wit, vomiting, dizziness, and headache, which indicate traumatic brain injury. Danahar disregarded these known risks to Ballard's health. Danahar was not just negligent in his treatment of Ballard he knowingly brought on a substantial risk to Ballard's health by allowing the brain injury to go on untreated and allowing fractured hand to heal on its own without proper splinting.

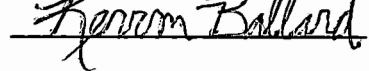
20. Danahar's actions or inactions resulted in Ballard continuing to experience vertigo, dizziness, frequent falls, and being confined to using a wheelchair or a walker for mobility. Similarly, Danahar's actions or inactions resulted in Ballard losing the full range of motion to his dominant hand.

And also his inability to stand/and/or walk. Ballards injuries will result in future pain and suffering in the form of further medical intervention, such as re-breaking the hand in order to reset it, as well as in loss of income due to the range of motion in his hand and his inability to properly balance himself.

PRAYER

Ballard prays for a judgment of monetary damages in excess of two million dollars from each of the named Defendants for pain and suffering, future medical costs, and loss of future income as a result of the injuries sustained and to come due to Thurman's excessive force, Boyd's failure to protect, and Danahar's deliberate indifference to his medical needs; or in the amount which the court deems just and proper under the law, together with the cost of his litigation, any attorney fees or expenses, and any other costs determined at the trial of the matter.

RESPECTFULLY SUBMITTED



KEVIN L BALLARD 80479
Plaintiff pro se
P.O. BOX 22800
Lincoln Ne 68542

CERTIFICATE OF SERVICE

COMES NOW, The Plaintiff in the above entitled and foregoing cause of action and hereby certifies that a true and correct copy of his foregoing petition for Administrative Agency Review was served upon.

Michael Hilgers, the attorney general of the state of Nebraska, by placing said copies in the United States mail, first class, postage prepaid, addressed to:

Michael Hilgers
Nebraska Attorney General
P.O. BOX 90920
Lincoln Nebraska 68509-8920

on this 19th day of April, 2023.

Respectfully Submitted,
Kerem Ballard
P.O. BOX 22800
Lincoln Nebraska 68542

Inmate Name KEVIN L BALLARD

(First) (Last)

Inmate # 80479

P.O. Box 22800
Lincoln, NE 68542-2800

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